No. 82-963

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

COMMONWEALTH OF MASSACHUSETTS,

Petitioner,

-v-

OSBORNE SHEPPARD,

Respondent.

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SUPREME COURT, U.S.

On Writ of Certiorari to the
Supreme Judicial Court of Massachusetts

RESPONSE OF AMICUS CURIAE ILLINOIS STATE BAR ASSOCIATION TO RESPONDENT'S MOTION TO STRIKE

The Illinois State Bar Association, amicus curiae, responds to the motion of Respondent to strike its brief as follows:

1. By consent of all parties, the Illinois State Bar Association filed a single brief in support of respondents in this case and in two related cases, United States v. Leon, No. 82-1771, and Colorado v. Quintero, No. 82-1711;

2. The question addressed by amicus curiae in all three cases was whether the exclusionary rule as a remedy for searches in violation of the fourth amendment should be modified by creation of an exception for errors made in objectively reasonable good faith;

3. Amicus curiae argued that no such exception should be created and therefore filed its brief in support of the Respondents in each case;

4. In addition, amicus included an argument appearing in its brief as Argument IV (pages 18-20), suggesting that the case of Massachusetts v. Sheppard was not an appropriate vehicle for review or modification of the exclusionary rule;

5. Respondent Sheppard has moved to strike the brief of amicus curiae, contending that Argument IV in fact supports the position of Petitioner in his case, and that the brief is therefore an amicus curiae brief in support of the Petitioner and as such not timely filed under Rule 36.2;

6. Amicus respectfully submits that its brief opposes the creation of an exception to the exclusionary rule, that this is the principal issue before the Court in each of the three cases, and that amicus has properly filed in support of Respondents and is not in violation of Rule 36.2;

7. Amicus further notes that it has not been made aware of any objection to its brief by Respondents in the Leon or Quintero cases;

8. Amicus further notes that the objection of Respondent Sheppard appears to be confined to Argument IV of its brief.

WHEREFORE, Amicus Curiae Illinois State Bar Association respectfully moves that the motion of Respondent Sheppard to strike its brief for alleged violation of rule 36.2 be denied.

AND FURTHER Amicus Curiae suggests that in the event that this court finds that rule 36.2 may have been violated, any such violation may be cured by striking Argument IV (pages 18-20) only, in that no specific objection has been made to any other portion of its brief; or by granting Respondent an opportunity to respond to such material as it believes is not in support of its position.

AND FURTHER, Amicus Curiae notes that any remedy afforded on Respondent's motion should apply only to this case and not to United States v. Leon, No. 82-1771 and Colorado v. Quintero, No. 82-1711, in which cases no party has objected to its brief.

Respectfully submitted,

Joshua Sachs
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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing RESPONSE OF AMICUS CURIAE ILLINOIS STATE BAR ASSOCIATION TO RESPONDENT'S MOTION TO STRIKE by mailing a copy first class mail, postage prepaid, on December 12, 1983, to counsel of record as follows:

John Reinstein
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Boston, Massachusetts 02108

Barbara A. H. Smith
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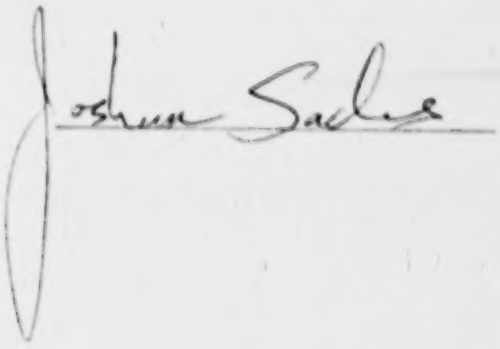
One Ashburton Place
Boston, Massachusetts 02108



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